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MR. POINDEXTER'S SPEECH,

DELIVERED IN THE

HOUSE OF REPRESENTATIVES

OF THE

UNITED STATES;

On the Joint Resolution from the Senate:

Saturday, December 30, 1809.

MR. SPEAKER—It has not heretofore been my practice to address you, on subjects relating to the general welfare of the nation. I have hitherto confined myself to the discharge of those duties which devolve on me, as the sole representative of a distant and important territory. But on the present occasion, I deem it an indispensable duty, to the performance of which I am led by every impulse of feeling, to express to this honourable assembly—to my constituents—and to the world, my opinions concerning the resolution under consideration. Sir, said Mr. P. the present ought not to be considered a party question. The sovereignty, the honour, and the best interests of America have been assailed, and the executive magistrate most grossly insulted, by Francis James Jackson, the minister plenipotentiary from his Britannic Majesty to the United States. A minister sent among us to excite the demon of discord and division; a legalized spy, prowling from Hampton to New York, through every city, town, and village, to designate the victims of corruption, and to subvert if possible, the allegiance of the citizens from their government, and thereby promote the views of the king his master. Under such circumstances there ought to be but one sentiment from Mississippi to Maine, and that sentiment should prompt us, without distinction of party, to rally around the constituted authorities of our common country, and by a patriotic burst of indignation to scout the foreigner. While, sir, the pendulum of reason vibrates between the innocence or guilt of those who administer the government of my country, I shall never hesitate to support the government against every species of foreign influence: Yes, sir, so long as there is a loop on which to hang a doubt, the vindication of the country to which I owe my existence, and to which I am bound by the strongest ties

of affection, shall call forth the energies which it has pleased heaven to bestow on me.

But in the present instance, the course pursued by the executive is manifestly founded in wisdom, moderation, and firmness, and merits the undivided support of the American people. Can I then, sir, forbear to express my astonishment, that the minister of Great Britain should find an advocate within these sacred walls? It is not wonderful that in matters of internal policy, we should differ as to the means best calculated to promote the general good; these differences often lead to useful investigation, and produce the most salutary results. But I cannot reconcile my mind to the novel and afflicting controversy which has arisen out of the subject under consideration.

Before I proceed to discuss the points immediately embraced by the resolution on your table, permit me to notice the remarks which have been made by gentlemen opposed to the measure, in relation to the character of Mr. Jackson. On this subject there appears to exist an uncommon portion of sensibility. The gentleman from Massachusetts, (Mr. Quincy) has told us that we are about to fulminate legislative contumely against the accredited minister of the sovereign of a great and powerful nation, who is bound to see that whatever treatment he may receive is not disrespectful. And the gentleman from New York, (Mr. Gardenier) has added, that the adoption of this resolution will inflict a fatal wound on the character of Mr. Jackson. Sir, I beg gentlemen who feel thus tenderly for the reputation of this minister, to tell us in what country he has acquired this celebrity of character? By what noble deeds has he signalized himself, and where is the record of them to be found? Was it prior to his memorable mission to Copenhagen, or subsequent to that disgraceful event, that he was clothed with the mantle of fame of which we are about to disrobe him? If gentlemen refer to a period anterior to the destruction of that devoted city, I put it to their candour to say, whether that act of perfidy, at the recollection of which the human mind recoils with horror and detestation, is not enough to stamp with infamy, the vile instrument of treachery and assassination who performed it? Can gentlemen be really in earnest when they speak with reverence of the character of Mr. Jackson? I hope they will pardon my doubts as to the sincerity of their declarations. What, sir, was the conduct of Mr. King, our late envoy extraordinary and minister plenipotentiary in London, when it was proposed to send this same Mr. Jackson to the United States as the minister of Great Britain on a former occasion? And let it be remembered that Mr. King is a federalist; a distinguished member of that party, who now manifest so much zeal in vindicating the character of Mr. Jackson. If I am correctly informed, and if not I call upon gentlemen to deny the fact; Mr. King felt it his incumbent duty to remonstrate against the appointment of Mr. Jackson as the resident minister in the United States. Was this a

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wanton act on the part of Mr. King? Will it be alleged by any gentleman in opposition to this resolution, that Mr. King was actuated by any unworthy motive in that transaction? I presume to say that such insinuations will not receive the slightest support. To what cause then are we to look as the basis of this remonstrance? The turbulent and unprincipled character of Mr. Jackson must suggest itself to every mind as the foundation of the objection. The British ministry, on every occasion which required extraordinary duplicity, have availed themselves of the services of this incendiary: These facts cannot be controverted, and yet gentlemen tremble lest the fame of this immaculate personage should fall a sacrifice to the ruthless violence of legislative contumely.

[Mr. Gardenier said he supposed the gentleman alluded to him as attempting to patch up a character for Mr. Jackson. That, said Mr. G. I expressly disclaim; and if the gentleman had understood my argument, his candour certainly would have prevented him from imputing to me that intention. I did not speak of the merits of Mr. Jackson, but I took this point—that the British government considered his character as good, and our denunciation of it, whether it is demonstrated to be bad or not, so long as they think he does not deserve it, is calculated to produce an obstacle to negotiation which cannot be overcome. I did not speak of his character.]

Mr. P. said, he had understood the gentleman in the manner he had stated his argument; the house would determine whether he had understood him correctly or not. But sir, while gentlemen are thus anxious to save the rotten fabric of Mr. Jackson's reputation from the destruction which awaits it, are they ignorant of the deleterious effects which the rejection of this resolution would have on the character of the President of the United States? A man, whom eulogy cannot exalt, and who soars above the miserable shafts of calumny and detraction. In order to elucidate this point, I beg the indulgence of the house, to take a concise view of the measures which were in operation at the close of the last session of the tenth congress. Commercial intercourse between the United States and Great Britain and France and their dependencies, was wholly interdicted. Provision was made by law, for raising a military force of six thousand men, in addition to the military peace establishment of the United States—formanning and equipping the whole naval force, including a large number of gun boats for actual service, and for holding in requisition one hundred thousand militia to be ready to march at a moment's warning. These were the precautions which the crisis demanded. Well sir, what were the events which occurred to produce a relaxation in these preparations for a state of actual hostility? About one month previous to the meeting of the extraordinary session of congress in May last, it was officially announced to the President by David M. Erskine, the British minister plenipo-

tentiary in this country, that he had received his majesty's instructions to offer suitable and honourable reparation for the aggression committed by a British naval officer, in the attack on the United States' frigate *Chesapeake*. The offer of satisfaction was accepted. This part of the arrangement was followed by propositions from Mr. Erskine for a renewal of commercial intercourse between the respective countries, which was likewise accepted; in consequence of which, Mr. Erskine explicitly states, in an official letter to Mr. Smith, the secretary of state, that he is "authorised to declare that the Orders in Council of January and November 1807, will have been withdrawn on the tenth day of June next." The President of the United States proceeded immediately to execute, with good faith, the agreement on his part, by issuing a proclamation declaring the revocation of these orders in council, whereby commercial intercourse between this country and Great Britain and her dependencies, was restored.

Permit me now, sir, to call the particular attention of gentlemen to the message of the President at the opening of the May session, from which I beg leave to make a few extracts.

"A revision of the commercial laws, proper to adapt them to the arrangement which has taken place with Great Britain, will doubtless engage the early attention of congress."

Again. "Under the existing aspect of our affairs, I have thought it not inconsistent with a just precaution, to have the gun boats, with the exception of those at New Orleans, placed in a situation incurring no expense beyond that requisite for their preservation and conveniency for future service; and to have the crews of those at New Orleans reduced to the number required for their navigation and safety. I have thought also, that our citizens detached in quotas of militia, amounting to one hundred thousand, under the act of March one thousand eight hundred and eight, might not improperly be relieved from the state in which they were held for immediate service. A discharge of them has accordingly been directed. And it is further submitted to the judgment of congress to decide how far the change in our external prospects may authorise any modifications of the laws relating to the army and navy establishments."

What are the plain and obvious conclusions to be drawn from the "promptitude and frankness with which the President met the overtures of Great Britain," and the full confidence which he here manifests in the good faith of that government? The inference is irresistible, that he did not entertain the most distant suspicion, that Mr. Erskine had either acted without authority, or that he had violated his instructions. But suppose the resolution under consideration should be rejected. In that event, the expressions contained in Mr. Jackson's letter of the 11th of October, which are repeated in several other communications, conveying the idea, that the executive government of the United States had a knowledge that the arrangement made by Mr. Erskine in behalf of his govern-

ment was entered into by Mr. Erskine, them. I deduce from this resolution, what of two fold purpose would speak of the arrangement that it could be known to the American British and French boats, with the situation incurred. To be held in regard to the change in commendation to which, the result to that recommendation from disgrace. President must fraudulent confidence and progress, the reason ground of that knew would Majesty. I call against the charge. No man whose can for a moment

I shall now, British minister disavowed. I admitted, that nations, the disavowed government, From this opinion ment was not engagements acknowledged thirdly, because United States. the minister of power of the government was clothed with the despatching the three purposes to this government

ment was entered into without competent powers on the part of Mr. Erskine, will receive all the support which this house can give them. I demand of gentlemen who oppose the passage of the resolution, whether such a proceeding would not contain a charge of two fold perfidy against the President of the United States? It would speak a language not to be mistaken. In the first place, the arrangement was entered into by the President, with a knowledge that it could lead to no other result than a disavowal, and with this knowledge he permits the ocean to be covered with the products of the American people, exposed to the robbery and plunder of British and French privateers. He directs the whole of the gunboats, with the exception of a few at New Orleans, to be placed in a situation incurring no expense, except that necessary for their preservation. The quota of one hundred thousand militia, ordered to be held in requisition for immediate service is discharged. And the change in our external prospects, is made the basis of a recommendation to reduce the army and navy establishments, added to which, the recruiting service was actually suspended in obedience to that recommendation. Yes, sir, in order to save Mr. Jackson from disgrace, and to fortify the honour of the British nation, the President must bear the foul imputation of having entered into a fraudulent contract with Mr. Erskine, and what is still more perfidious and extravagant, of having corruptly recommended to congress, the reduction of our means of national defence on the ground of that arrangement, which at the time it was made, he knew would result in a disavowal on the part of his Britannic Majesty. I cannot submit, in silence, to insinuations like these, against the *chief executive magistrate of the only free people on earth*. No man whose mind is exempt from the despotism of prejudice, can for a moment countenance such glaring absurdities.

I shall now, sir, take a view of the ground on which the act of the British minister plenipotentiary in the United States is professedly disavowed. In the course of this discussion, it seems to have been admitted, that if Mr. Erskine did really violate his private instructions, the disavowal of the arrangement of April by the British government, was regular and not inconsistent with public law. From this opinion I beg leave to dissent. First, because the agreement was not contingent or executory. Secondly, because the engagements entered into came within the open commission and acknowledged powers of the minister who concluded it. And thirdly, because it was executed with good faith on the part of the United States. Besides the usual letter of credence, with which the minister of one sovereign power is furnished to the sovereign power of the government at which he is accredited, Mr. Erskine was clothed with special authority on this particular occasion. In the despatch of the 23d of January, Mr. Canning, after enumerating the three conditions which Mr. Erskine was instructed to propose to this government, proceeds with his instructions in the fol-

lowing words. "As however, it is possible, that the delay which must intervene before the actual conclusion of a treaty, may appear to the American government to deprive this arrangement of part of its benefits, I am to authorise you, if the American government should be desirous of acting upon the agreement before it is reduced into a regular form, either by the immediate repeal of the embargo and the other acts in question, or by engaging to repeal them on a particular day, to assure the American government of his majesty's readiness to meet such a disposition, in the manner best calculated to give it immediate effect."

Thus Mr. Erskine is made the sole judge of the extent, and import of his instructions, and if he has been guilty of a departure from them, his sovereign cannot take advantage of that circumstance, so as to work an injury to the other contracting party. But independent of this special power, I contend that the act of Mr. Erskine was strictly within his general letter of credence, and that the British government was bound to perform the agreement, on its part, unless it could be shewn, that fraud and collusion, had been practised between Mr. Erskine, and Mr. Smith the American secretary of state. This I think was manifestly the opinion of Mr. Canning, which I shall attempt to shew from Mr. Jackson's correspondence in the course of my argument. Mr. Canning without doubt knew the law on this subject, and had charged the successor of Mr. Erskine to make out a good case, for the preservation of his majesty's honour.

Permit me now sir to examine what are the established principles of public law, in relation to contracts entered into by proxy. I shall refer in the course of my remarks to several writers on the law of nations, whose authority will not be questioned, and for greater convenience, I propose to give a quotation from each in succession. Puffendorff, page 309—10. Here the principle for which I have contended, is clearly supported. "If any agent be sent with a double commission, one open, to show the person with whom he is to transact, the other secret, prescribing what steps he shall take, and how far he shall proceed; it may be made a question, whether the agent shall oblige his principal if he exceed his private and secret orders, and yet to keep within his open commission where the affirmative side ought to be maintained. For by my own instructions, I bind myself to the third person with whom the contract is made that I will ratify and make good what my agent shall conclude on. And by my *secret orders* I bind my agent not to recede from such positive terms, in which point if he transgress, he stands accountable to me, for so much as I lose by his mismanagement, but I am still tied to perform to the third person, what was thus granted in my name. For otherwise there could be no manner of safety in treating by commissioners, it being ever to be feared, lest their secret directions should differ from their *open powers*, neither could there be a more specious pretence made use of to overthrow all affairs

transacted by treaties. But in the present case that his private design." The 194. "Whether act for us, as such commissions give some privacy, then we would then to act, rather than we allow which he makes wanting. For an agent, which is the party to whom such agent does instructions which are not known to them; they cannot mislead him; it appears to him, and full consequences of collusion, between their power at promises thus.

I trust sir, that the conduct of the British minister violated his full power. I conclude an agent's obligation to suspend Mr. Canning's conduct of such a land of such necessity to relieve the important the fulfilment prevent delay the enlargement.

But whether the letter of credence was bound by what he had violated his known and obvious duty, any gentleman, which the very questioned, whether

transacted by mediation, and to deceive, and abuse men with vain treaties. But it must be observed, we suppose here, as in the former case that the agent when he thus transgresses the bounds of his private instructions, did it not out of a dishonest and treacherous design." The same doctrine is held by Rutherford, vol. 1 page 194. "Where we have given a man a power or commission to act for us, as our proxy, though no restrictions or limitation of such commission may appear, yet it frequently happens that we give some private instructions to such proxy, or agent, in what manner we would have him act, and how far he may go. Suppose him then to act contrary to these private instructions and to go farther than we allowed him, we shall be obliged to stand to the promise which he makes for us, notwithstanding our consent seem to be wanting. For that act of our will, whereby he was appointed our agent, which is the only act of our will that is or can be known by the party to whom the promise is made, is sufficient to make what such agent does for us, be considered as our own act: the private instructions which we gave him cannot affect any one to whom they are not known, and from whom we were determined to conceal them; they cannot therefore so affect the party to whom the promise is made as to prevent his claim upon us. The consent which appears to him, must in respect of him, be looked upon as our true and full consent: if it was otherwise, there would be such room for collusion, between the promiser and his agent, that it would be in their power at any time, to prevent any obligation from arising upon promises thus made."

I trust sir, no gentleman will hereafter attempt to justify the conduct of the British government, either on the ground that Mr. Erskine violated his secret instructions, or that he was not possessed of a full power. The despatch of the 23d. January authorises him to conclude an agreement to take immediate effect, without any reservation to suspend its operation for the ratification of his majesty. Mr. Canning well knew that the first information received in England of such an agreement, would bring with it the supplies so necessary to relieve the wants of his suffering country: it was therefore important that the British minister here should stipulate for the fulfilment of the terms agreed on by his majesty, and thereby prevent delay in the benefits which would result to that nation, from the enlargement of our commerce.

But whether we consider that special authority or the general letter of credence, it is equally clear that the British government was bound by the act of its minister. The plea that Mr. Erskine had violated his private orders, is unavailing both in reference to the known and established principles of public law, and to the plain and obvious dictates of reason, and of common sense. I challenge any gentleman to show in the annals of diplomacy, a solitary case in which the veracity of an accredited minister at any court has been questioned, when he officially makes known the instructions he has

received from his sovereign. If then Mr. Erskine had authority to bind his government, it may be useful to examine the ground on which the contract he entered into with the President might be impugned. On this point, I refer gentlemen to Pothier on obligations page, 21. "It is only the fraud which *has given rise* to the contract that may give occasion for the rescision of it, viz: the fraud by which one of the parties has *induced the other* to contract, who would not have contracted without it. 2. It is requisite also in order that I may claim the rescision of my engagement, that the fraud which has been made use of in order to induce me to contract could have been committed *by the party with whom I contracted*, or at least that he should have participated in it. If it has been committed without his participation, and if I have not besides been enormously injured, my engagement is valid, and is not liable to rescision." These are the principles upon which alone the arrangement of April could have been disavowed by the king of Great Britain, without a sacrifice of the honour of the British nation; and I think it very evident that Mr. Jackson has taken as the basis of his correspondence with Mr. Smith, not merely that Mr. Erskine violated his instructions, but that the secretary of state had induced him to substitute terms which were known not to be within his powers, and consequently that the agreement originated in fraud and collusion. This sir, is the broad position assumed by Mr. Jackson, in his letter of the 11th of October. In that letter he states, that it would have been unreasonable for this government to complain of the disavowal of an act, done under such circumstances as could only lead to the consequences that have actually followed, and then proceeds to explain the circumstances to which he alludes. "It was not known when I left England whether Mr. Erskine had according to the liberty allowed him, communicated to you *in extenso*, his original instructions; it now appears he did not. But in reverting to his official correspondence, and particularly to a despatch addressed on the 20th of April to his majesty's secretary of state, for foreign affairs, I find that he there states that he had submitted to your consideration, the three conditions specified in those instructions, as the ground work of an arrangement which according to information received from this country, it was thought in England might be made with a prospect of great mutual advantage. Mr. Erskine then reports *verbatim, et seriatim*, your observations upon each of the three conditions, and the reasons which induced you to think that others might be substituted in lieu of them. It may have been concluded *between you* that these latter were an equivalent for the original conditions, but the very act of substitution, evidently shows that these original conditions were in fact, very explicitly communicated to you, and by you of course laid before the President for his consideration. I need hardly add, that the difference between these conditions and those contained in the arrangement of the 18th and 19th of April is sufficiently obvious to require no

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Mr. Canni ed no right " the 23d of Jan lic law, he cou the agreemen the contractin fication of the sons urged by vow the agree Mr. Erskine n by his instruct sir. Does he p to the contract Mr. Smith, wa ed in the despa on each of the be substituted i concluded betw latter, were an meaning of the first conceived lieu of the origi Mr. Erskine, tions. To she against the Am letter of the 23 (Mr. Erskine) plated in his ins by you in lieu c the subject, I r British ministry honour to carry it was incumbe United States h

elucidation; nor need I draw the conclusion which I consider as admitted by all absence of complaint on the part of the American government, viz: that under such circumstances, his majesty had an undoubted, and incontrovertible right to disavow the act of his minister." Here then we have the original ground taken by Mr. Jackson, to vindicate the honour of his sovereign. I do not believe that this was the work of his own imagination. No sir: it formed an object of no small magnitude in his mission to this country, to inculcate the executive government of the United States, in this affair, and thereby to exculpate his majesty from the disgrace incident to the violation of a solemn engagement. "The breach of a perfect promise," says a modern writer, on the law of nations, "is a violation of another person's right, and as evidently an act of injustice as it would be to rob a man of his property."

Mr. Canning, well knowing that the king his master had reserved no right "to disavow the act of his minister," in the despatch of the 23d of January, and that upon the most solid principles of public law, he could not refuse with good faith to execute his part of the agreement, except he supported the allegation of fraud between the contracting parties, charges the new minister to rest the justification of the disavowal on that basis. And what sir, are the reasons urged by Mr. Jackson to show the right of his majesty to disavow the agreement of April; does he rely on the assertion, that Mr. Erskine made propositions to this government not warranted by his instructions, and therefore not binding on his sovereign? No sir. Does he pretend that a full power was necessary to give validity to the contract? This is not pretended. But he says explicitly, that Mr. Smith, was made acquainted with the three conditions, contained in the despatch of the 23d of January, that he made observations on each of them, and offered reasons, why *he thought others might be substituted in lieu of them*. It may, says Mr. Jackson, have been concluded *between you* (Mr. Smith, and Mr. Erskine,) that these latter, were an equivalent for the original conditions. The evident meaning of these expressions is, that the arrangement of April was first conceived by Mr. Smith, that he proposed to substitute it in lieu of the original conditions, and that he collusively prevailed on Mr. Erskine, to accept them as an equivalent for those conditions. To shew that Mr. Jackson never lost sight of this charge against the American secretary of state, I refer to a sentence in his letter of the 23d of October. "So far from the terms *which he* (Mr. Erskine) *was actually induced to accept*, having been contemplated in his instructions, he himself states that they were substituted by you in lieu of those originally proposed." From this view of the subject, I must conclude, that not only Mr. Jackson, but the British ministry themselves, were of opinion, that to refuse with honour to carry the arrangement of April into effect on their part, it was incumbent, on them to show, that the executive of the United States had fraudulently induced Mr. Erskine to substitute

that arrangement in lieu of the conditions "originally proposed." Mr. Jackson expressly admits in his letter of the 4th of November, that he must continue to repeat this insulting charge, "whenever the good faith of his majesty's government is called in question," and for what purpose? "To vindicate its honour and dignity, in the manner that appears to me best calculated for that purpose." This is indeed a most unfortunate admission for Mr. Jackson. The official correspondence of Mr. Erskine with the secretary of state, repels the foul insinuation, and fixes a stain on the honour of the British nation, which the corroding hand of time cannot efface.

But the gentleman from Connecticut (Mr. Pitkin) has told us, that the agreement entered into by Mr. Erskine could not bind his government, because that gentleman had no full power. A sentence from Mr. Jackson's letter of the 4th of November, will answer that argument more conclusively than volumes of reasoning, in all the syllogistic forms of ancient or modern logicians. "I must beg your very particular attention to the circumstance, that his majesty's ratification has been withheld, not because the agreement was concluded *without a full power*, but, because it was altogether irreconcilable to the instructions, on which it was *professedly* founded." The gentleman from Connecticut, admits that the President could not demand a view of Mr. Erskine's secret instructions, and Mr. Jackson assures us, that the want of a full power formed no part of the motive which induced his majesty to withhold his ratification. A more complete justification of the American government could not be given, than is contained in these conflicting arguments. I have shown that Mr. Canning in the despatch of the 23d of January, had provided for an immediate execution of the agreement; the instructions of Mr. Erskine were known only to himself, and were submitted to be exercised entirely at his discretion, according to his own opinion of their spirit and intention. The ratification of his majesty is not made a pre-requisite to the fulfilment of the agreement on our part; it follows therefore according to the respectable authority which I have quoted, that the breach of a perfect promise made on the part of Great Britain, by a minister whose powers are acknowledged to be full and sufficient for the purpose, is a violation of right. "And as evidently an act of injustice as it would be to rob a man of his property."

The cases referred to by the gentleman from Connecticut, relate to treaties, conventions and explanatory articles of treaties, where the consent of the co-ordinate departments of the government to whom the treaty making power is confided, must be obtained, before either party is at liberty to proceed to their execution.

To illustrate the distinction which I shall take between the disavowed arrangement, and a treaty, I refer to Ward's history of the law of nations, page 231. "By treaties, I do not mean merely those agreements which men fell upon, in order to bring about a cessation from war. But all those deeds, whatever they were, by which some uncertainty was put out of doubt, some contingent difficulty

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smoothed away; and the natural rights of mankind, not unfrequently trenched upon, in order the better to enjoy those that remained. The minister of Great Britain, in the case under consideration, entered into no deed either formal or informal, but merely declares himself to be authorised to pledge his majesty for the performance of an act purely executive. The removal of the orders in council, is altogether a cabinet measure, which might be taken at any moment, in the recess of parliament. This government therefore, could not conceive itself at liberty to hesitate in placing full confidence in the official declarations of Mr. Erskine, that he was instructed to declare, "that the Orders in Council of January and November 1807, will have been withdrawn, on the 10th day of June next." Let us look sir, at the conduct of Mr. Canning, in a case, precisely apposite to this. The President of the United States was authorised, in the event of such peace or suspension of hostilities between the belligerent powers of Europe, or of such changes in their measures affecting neutral commerce, as might render that of the United States sufficiently safe, in his judgment, to suspend in whole, or in part, the act laying an embargo on all ships and vessels in the ports and harbours of the United States, and the several acts supplementary thereto. Instructions were accordingly forwarded to our minister at London, to propose a suspension of the embargo, as an equivalent for the removal of the British orders in council—so far as they respected the United States. This proposition it seems was, in the first instance, communicated in conversations between Mr. Pinkney, and Mr. Canning, upon which the latter has made the following remarks. "In the first of our conferences, I understood you to say little more *on the authority of your government*, than that you were instructed to remonstrate against the Orders in Council of the 7th of January, and of the 11th of November 1807, but to add, *as from yourself, an expression of your own conviction*, that if those orders were repealed, the President of the United States would suspend the embargo, as to Great Britain. Upon the consequences of such a suspension of the embargo, while it would still continue to be enforced against France, you expatiated largely, *still speaking however, as I understood you, your own individual sentiments*." Will gentlemen dispute the accuracy of the *orthodox, sharp sighted George Canning*? I think sir, unless some radical change has very recently taken place, there is nothing to be feared on that score. Mr. Pinkney, in these conversations, was induced to believe that his proposal would be well received, and Mr. Canning, in order to evade the obligation which he might have incurred relative to a removal of the orders in council, resorts to every pretext within the grasp of his fertile imagination, to shew that the proposition was not submitted in a regular form, so as to make it binding on the President of the United States. Well sir, does he demand, of Mr. Pinkney the production of a full power? Is that made a *sine qua non*, to all further negotiation? None of these things appear to have

entered into the brain of Mr. Canning; notwithstanding he seems peculiarly disposed to equivocate, and even to misrepresent the words of Mr. Pinkney. The only objection which he thought it plausible to urge was, that the overture was not made on the authority of the President, but that Mr. Pinkney expressed his *own opinion*, that if the orders in council were removed, the President of the United States would suspend the embargo as to Great Britain.

The result of that correspondence shews, that the overture of Mr. Pinkney was rejected on principles of general policy, and not on either of the grounds of exception taken by gentlemen to the powers of Mr. Erskine. There is not the slightest shade of difference between the two cases. The removal of the embargo by the President, and of the orders in council by his Britannic Majesty, were reciprocal acts, each within the range of executive authority, without requiring the interposition of any co-ordinate branch of either government.

But, sir, it is impossible to mistake the duplicity of Mr. Canning in this transaction. We know too much of that jesuitical negotiator in America, to be caught in the cobweb which he has thrown over the real motives which influenced his majesty's ministers, in the disavowal of the act of Mr. Erskine. The delusive idea, that he had violated his instructions, is the ostensible, not the real cause of the disavowal. I think it has been satisfactorily shown, that the departure of a proxy from his secret orders, does not impair a fair and bona fide contract, which he enters into for his principal; and from the admissions of Mr. Canning himself, it will be readily inferred, that such a departure is not in fact the consideration on which the arrangement of April was rejected. When Mr. Pinkney, our minister in London, was informed that a new minister was to be sent to America, Mr. Canning assigns as the reason, that Mr. Erskine had not acted in conformity to the despatch of the 23d of January, in obtaining the three conditions therein specified; and that these conditions must be obtained before any alteration could take place in the cabinet measures of Great Britain, affecting the neutral commerce of the United States. He states explicitly, that Mr. Jackson is to proceed to America, "not on any special mission, which Mr. Erskine was not authorised to promise, except upon conditions not one of which he has obtained."

On the 23d of June following, Mr. Canning in a conversation with Mr. Pinkney respecting these very conditions, which he previously declared must be made the basis of the repeal of the orders in council, "admitted that the second condition had no necessary connexion with the orders in council, and intimated that they would have been content to leave the subject of it to *future discussion and arrangement*. And with respect to the third condition, he said, that he was himself of opinion, that the idea upon which that condition turns could not well find its way into a stipulation; that he had nevertheless believed it proper to propose the condition to the

United States whole of these that minister ble condition nected with tion for their most irrefrac relative to th because these vernment? can be author of which Mr. that the two ment, had no dence which dence, as to t nished, and I sions of Mr. Sir, I am one about by the ration of our task of quiet manufacturing morous again ployment and ticles of cotton receive from British army England, cov by these disas necessity, the indispensable state of things letters of instr declare, that t day. But, si renewal of foreign office, were glutted supplied, and stored to the taught them t war was renew The affairs of tish ministry. recent calam changed for th should reach

United States. If then, sir, the failure of Mr. Erskine to obtain the whole of these conditions was really the reason on which the act of that minister was disavowed, why, let me ask, are the only objectionable conditions suddenly abandoned, and declared to be wholly unconnected with the orders in council, and *inadmissible* in any stipulation for their repeal. Does not this abandonment carry with it the most irrefragable demonstration, that the arrangement of April, relative to the removal of the orders in council, was not disavowed because these conditions were not acceded to by the American government? At one moment we are told, that no special mission can be authorised to this country, except upon conditions not one of which Mr. Erskine had obtained; and afterwards it is confessed that the two conditions which were alone offensive to this government, had nothing at all to do with the subject. I waive the evidence which is contained in Mr. Erskine's explanatory correspondence, as to the *several letters* of instruction with which he was furnished, and I rest my argument on this point solely—on the admissions of Mr. Canning in his conversation of the 23d of June, 1809. Sir, I am one of those who believe that this agreement was brought about by the shock which Great Britain sustained under the operation of our embargo. Mr. Canning had to perform the arduous task of quieting the murmurs of a hungry people. The great manufacturing interest of the nation were discontented and clamorous against ministers, because they were thrown out of employment and deprived of their usual supply of the important articles of cotton and tobacco, which they had been accustomed to receive from America. Ireland was on the brink of ruin. The British army in Spain was defeated and compelled to return to England, covered with wounds instead of laurels. Admonished by these disastrous circumstances, and urged by the hard hand of necessity, the relaxation of their maritime restrictions appeared to be indispensable to the salvation of the British nation. It was this state of things which prompted Mr. Canning to furnish the *several letters* of instruction to Mr. Erskine, on which he was authorised to declare, that the orders in council would be removed on a particular day. But, sir, before the success of Mr. Erskine's proposition for a renewal of commercial intercourse was officially known at the foreign office, the markets of Great Britain and her dependencies were glutted with the products of America. Their wants were supplied, and from a state little short of starvation, they were restored to the enjoyment of that abundance, which custom had taught them to look for from this fertile region. The continental war was renewed with great vigour by the ill-fated emperor Francis. The affairs of Spain revived again the desponding hopes of the British ministry. New expeditions were planned; and the gloom which recent calamities had spread over the national prospects, was exchanged for the illusory dream of countless victories, whose terrors should reach even the imperial throne of Napoleon himself. Buoyed

up by these delusive calculations, his majesty was induced to disavow the agreement entered into by Mr. Erskine with the American government. The suggestion that Mr. Erskine acted contrary to his *several letters* of instruction, is a mere pretext, which cannot bear the penetrating touch of open and candid investigation. We have learnt from experience, that the only security we can have for the good faith of the British government, is necessity. The embargo was a weapon which might have been wielded with great effect in producing that necessity, and in redressing the wrongs inflicted on this country by the belligerent powers of Europe. "God's chosen people," the planters of the Southern states and territories, have sustained the most severe losses from the operation of the embargo, and yet no people in the union have evinced a more ardent determination to support that and every other measure of policy calculated to vindicate the national honour. But the fact is notorious, that there was not virtue enough in the Eastern portion of the union, to carry the law into effect. That expedient is now rendered imbecile by the fatal experiment which it has recently undergone. There is now no alternative but war or submission. But the adoption of the resolution is deprecated on the ground of its hostile aspect. We are told by a gentleman from New York, (Mr. Gardenier) that it is an appeal to the king of England, on the subject of the misconduct of one of his servants, not by argument, but by menace, and that gentleman has asked, what would be the conduct of Southern gentlemen, if required to chastise a servant who had transgressed, when that request was accompanied with a threat of personal violence in case of refusal? I will answer the gentleman's hypothesis by a concise statement of facts. The people of the United States have been robbed of their property, while pursuing a lawful commerce on the high seas. Our fellow citizens have been impressed to the number of several thousand, and compelled to enter into the service of his majesty, on board his ships of war, without the most distant prospect of relief. A national ship has been attacked in a time of profound peace by a British squadron, and her crew most shamefully murdered within our own jurisdictional limits, for which acknowledged outrage upon the national sovereignty no honourable atonement has been made. Our commerce is restricted by the enforcement of regulations inconsistent with the most sacred principles which bind together the nations of the earth; and to cap the climax, the executive government of this country is charged with perfidy and falsehood in its very domicile. Now, sir, I ask *Northern gentlemen* to say, how they will resent these injuries and insults which the nation has received from Great Britain? Will they crouch under the lash of this inexorable tyrant? or will they by a manly display of dignified firmness, support the rights, the honour, and independence of the United States? Sir, between individuals, when the party assailed calls on those around him for protection, and seeks to shelter himself from

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danger, the assailant becomes more brave, and rushes with impetuosity in pursuit of the object of his vengeance; but where each man shews an equal disposition to maintain his ground, a parley is not unfrequently the result. The gentleman is unwilling even to menace his most gracious majesty, but wishes, in the mildness of christian forbearance, to appeal to him by argument and *persuade him to do us justice*; while we are to retreat as if affrighted by some fell spirit of destruction from the proposition before us, because forsooth it may so affect the delicate nerves of his majesty that he can never "*speak to us again*." Sir, this is not the language which was held by our venerable fathers who so nobly achieved our independence, and it is not the language which will perpetuate that independence.

If indeed we could be so pusillanimous as to dread the consequences of a manly declaration of our rights, and our determination to support them, it might be questionable, whether Great Britain would stoop so low as to speak to us. Under such humiliating circumstances we should deserve the contempt of the world. The gentleman from Massachusetts, (Mr. Quincy) has denounced the resolution on your table, as a tissue of falsehood. That gentleman has taken as the ground of his argument, that the knowledge imputed to this government of Mr. Erskine's instructions, refers to the time of the disavowal, and not to the time the agreement was entered into. I shall not ransack these documents for the purpose of sifting from Mr. Jackson's letters the most offensive expressions which they contain. The great object of his mission was to rescuse his own government from disgrace, by fixing a charge of fraud and collusion on the executive of the United States, and that object is steadily pursued through the whole correspondence. But as the gentleman from Massachusetts has given us a lumping argument, I shall call on Mr. Jackson for the only reply which it merits. And really, sir, I beg pardon of Mr. Jackson, for having so often to set him in collision with his friends. I hope it will produce no misunderstanding between them. Mr. Smith, in his letter of dismissal to Mr. Jackson, enumerates the causes why no further communications will be received from him; and that these may be fairly before the house, I beg leave to refer to the letter itself:

Department of State, November 8th, 1809.

SIR,

IN my letter of the 19th ultimo, I stated to you, that the declaration in your letter of the 11th, that the despatch from Mr. Canning to Mr. Erskine of the 23d January, was the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it related, was then for the first time made to this government. And it was added, that if that despatch had been communicated at the time of the arrangement, or if it had been known that the propositions

contained in it were the only ones on which he was authorised to make an arrangement, the arrangement would not have been made.

In my letter of the 1st instant, adverting to the repetition in your letter of the 23d ultimo, of a language implying a knowledge in this government that the instructions of your predecessor did not authorise the arrangement formed by him, an intimation was distinctly given to you, that after the explicit and peremptory asseveration that this government had not any such knowledge, and that with such a knowledge, such an arrangement would not have been made, no such insinuation could be admitted by this government.

Finding that in your reply of the 4th instant, you have used a language which cannot be understood but as reiterating and even aggravating the same gross insinuation, it only remains in order to preclude opportunities which are thus abused, to inform you, that no further communications will be received from you, and that the necessity of this determination will, without delay, be made known to your government. In the mean time a ready attention will be given to any communications affecting the interests of the two nations, through any other channel that may be substituted.

I have the honour to be, &c.

(Signed)

R. SMITH.

Well sir, what does Mr. Jackson say, through Mr. Oakley, in reply to the enumeration of facts, which is contained in Mr. Smith's letter? He says, "that Mr. Jackson has seen with much regret, that *facts* which it has been his duty to state in his official correspondence, have been deemed by the American government to afford a sufficient motive for breaking off an important negotiation, and for putting an end to all communication whatever with the minister charged by his sovereign with that negotiation, so interesting to both nations, and on one point of which, an answer has not even been returned to an official, and written overture." Is not this a satisfactory answer, to the labored speech of the gentleman from Massachusetts? Mr. Jackson does not pretend that he was misunderstood, or mistated by Mr. Smith. He merely regrets, that the facts, which it had been his duty to state, was deemed a sufficient motive for breaking off an important negotiation. It is tacitly admitted that he had charged this government with a knowledge that the despatch of the 23d of January, was the only despatch by which the conditions were prescribed to Mr. Erskine on the subject to which it related. That with this knowledge, the President had collusively induced Mr. Erskine to substitute the arrangement of April, "in lieu of the conditions originally proposed," and that under these circumstances, his majesty had an undoubted and incontrovertible right to disavow that arrangement, but he regrets that these facts, which it had been his duty to state, should be deemed by the American government to afford a sufficient motive for

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breaking off an important negotiation." Sir, I do not believe if Mr. Jackson was now at the bar of the house, that in his own defence he would descend to retract these insulting charges. Nay I go further, I do not believe he would feel himself authorised to retract them, under any circumstances. To these facts says Mr. Jackson, "I have scrupulously adhered, and in so doing *I must continue*, whenever the good faith of his majesty's government is called in question." How far the knowledge which this government possessed at the time the agreement was disavowed, is connected with a justification of the act, remains for the gentleman from Massachusetts to shew. "It is only the fraud which has *given rise* to the contract that may give occasion for the rescision of it," and according to the premises assumed by the gentleman, it follows that if this government knew the extent of Mr. Erskine's powers, at the time the disavowal of his majesty was made known, ergo, the agreement was fraudulent and void, *ab initio*. I leave the gentleman to reconcile these absurdities. But it has been said, that the threat which the resolution contains, will be an effectual barrier to further negotiation. Mr. Jackson has indeed alleged that his dismissal put an end to an important negotiation, but the most superficial view of his correspondence must satisfy every man that such is not the fact. Mr. Canning, as early as the 27th of May, informs us that Mr. Jackson is to proceed to America, "not on any special mission, which Mr. Erskine was not authorised to promise, except upon conditions not one of which he has obtained," and notwithstanding every gentleman has warmly protested against these conditions, they seem to have forgotten that Mr. Jackson has expressly made their adoption the ultimatum of his government: the event on which he is authorised to conclude a treaty. And this sir, is the important negotiation, which has terminated with the mission of Mr. Jackson, and which gentlemen fear will not again resuscitate. We are required by this resolution to give a pledge to the American people and to the world to "stand by and support the executive government in its refusal to receive any further communications from Francis James Jackson." What answer shall we give to this proposition? Shall we say to the American people, to Great Britain, and to the world, that we will not stand by and support the executive government in that refusal? Let us consider the consequences of such a step in the present crisis.

The President of the United States has requested his majesty to recal the offending minister, from whom he refuses to receive further communications. That minister has doubtless given to his transactions here, a colouring favourable to the part he has acted, and his representations will beat in unison with the wishes of his sovereign. And, sir, at the very moment when these despatches form the subject of consultation in the British cabinet, a transcript from your journals, announces the determination of the representatives of the people, not to support the conduct of the Presi-

dent in his refusal to receive further communications from Mr. Jackson!! Is it to be expected that under such circumstances, the request of the executive would command the respectful attention, which its importance to the welfare of the nation really demands? So far from attending to that request, the President would be told "that he had insulted the minister of a great and powerful nation, while in the legitimate discharge of his official functions; and that upon a solemn appeal to the most popular branch of the American government, they had refused to stand by and support him in the attitude which he had assumed towards that minister. If then you cannot find support within the walls of your own capitol, it is unreasonable in you to expect his majesty to listen to your request." Mr. Jackson might be recalled, but the breach between the two nations would receive a more portentous aspect by a demand from the British government of ample atonement for the insult he had received in his ministerial character, notwithstanding the solemn declarations of the executive to the contrary. And, sir, all the consequences which gentlemen seem to anticipate from the adoption of the resolution, would unavoidably flow from its rejection. We should in that case say to the American people, and to the world, that we will not "call into action the whole force of the nation, *should it become necessary*, in consequence of the conduct of the executive department in this particular," nor "repel future insults if they should be offered." And is there an honourable member on this floor, who is prepared to say, that he will not call into action the whole force of the nation if it *should become necessary*? That he will not repel future insults if they should be offered? Sir, I should loathe my country, if such degrading sentiments could receive the sanction of the national legislature.

Whatever may be the fate of the resolution, it has my hearty approbation. 'Tis the only support which the constitution permits me to give it. But though my suffrage cannot be recorded, my hand and my voice shall be raised to defend the honour and independence of the nation, so long as the vital spark shall continue to animate my bosom.

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